

**ELECTIONS COMMISSION**

Meeting Minutes

January 9, 2013

**ROLL CALL**

**PRESENT:** Chair Michael Smith, Vice-Chair Erica Cosgrove, Commission Members Leon Louie and Rolanda Pierre-Dixon

**ABSENT:** Commissioner Linda Edgeworth

**STAFF:** Acting City Clerk Toni Taber, Sr. Deputy City Attorney Sandra Lee, and Deputy City Clerk Cecilia McDaniel

**ORDER OF BUSINESS**

**I. CALL TO ORDER**

The members of the San Jose Elections Commission convened at 5:38 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

**II. ADOPTION OF THE AGENDA**

Discussion: Chair Michael Smith requested deferral of items VII.A.a through VII.A.d (hearings on complaints) to a later date. The reason given for the request for deferral is that the reports were sent out within three days of the meeting; however, the voluminous amounts of exhibits were not. To allow the parties of the complaints and the Commissioners enough time to review the materials and give adequate time for a response, a deferral is necessary.

Public Comment: Tam Nguyen, the attorney representing Respondents Tho NguyenTan and Thien Luong Huynh (Report #3 - item VII.A.c), expressed his concerns and frustrations with the Elections Commission on the complaint process.

Tam Nguyen also informed the Commissioners of a new complaint he filed and attempted to hand out copies to the Commissioners. Chair Michael Smith stopped Mr. Nguyen from disclosing the details of his new complaint and informed him that the Commission was not allowed to receive copies of new complaints or know the details of new complaints until they have been reviewed and/or investigated by the Evaluator.

Acting City Clerk Toni Taber gave Tam Nguyen copies of the exhibits to the reports referenced in item VII.A. and directed him to the Elections Commission website to obtain an electronic copy.

Action: Upon a motion by Commissioner Rolanda Pierre-Dixon, and seconded by Vice Chair Erica Cosgrove, the Commission approved the adoption of the January 9, 2013 agenda with the deferral of items VII.A.a through VII.A.d to a later date. Vote (4-0-1; Commissioner Edgeworth absent)

**III. PUBLIC COMMENT – None**

**IV. CLOSED SESSION – None**

**V. APPROVAL OF MINUTES**

- A. November 14, 2012
- B. December 12, 2012

Documents Filed: Draft Elections Commission minutes for November 14, 2012 and December 12, 2012.

Discussion: Chair Michael Smith made some revisions to the November 14, 2012 minutes to correct minor name changes and grammar on pages 3, 6 and 7. Chair Michael Smith also made a revision to the December 12, 2012 minutes to correct the format of the vote on page 1.

Action: Upon a motion by Vice Chair Erica Cosgrove, and seconded by Commissioner Rolanda Pierre-Dixon, the Commission approved the meeting minutes from November 14, 2012 and December 12, 2012 as revised. Vote (4-0-1; Commissioner Edgeworth absent)

**VI. REPORTS**

- A. Chair – None
- B. City Attorney – None
- C. City Clerk – None
- D. Investigator/Evaluator – None

**VII. ITEMS SCHEDULED FOR ACTION**

- A. Hearing on the following related complaints:

Documents Filed:

- 1) Report Number 1 to the San Jose Elections Commission from Hanson Bridgett LLP dated January 3, 2013 regarding the Daley v. Nguyen complaint filed on October 10, 2012;
- 2) Report Number 2 to the San Jose Elections Commission from Hanson Bridgett LLP dated January 3, 2013 regarding the Hawkins v. Crema Coffee Co., LLC, et. al. complaint filed on October 26, 2012;

- 3) Report Number 3 to the San Jose Elections Commission from Hanson Bridgett LLP dated January 3, 2013 regarding the Hawkins v. Friends of Jimmy Nguyen, et al. complaint filed (as amended) on December 7, 2012;
- 4) Report Number 4 to the San Jose Elections Commission from Hanson Bridgett LLP dated January 3, 2013 regarding the Hoang v. Herrera, et al. complaint filed on December 10, 2012;
- 5) Combined exhibits for Report Numbers 1-4;
- 6) Appendix to Report Numbers 1-4;
- 7) Response to Report Number 1 from Richard Robinson, Attorney for Respondent Jimmy Nguyen, to the San Jose Elections Commission dated January 8, 2013; and
- 8) Response and Objection to Report Number 3 from Tam Nguyen, Attorney for Respondents Tho Nguyen Tan and Thien Luong Huynh, to the San Jose Elections Commission dated January 8, 2013.

Discussion: Chair Michael Smith stated that items VII.A.a through VII.A.d have been deferred. The Commissioners discussed their availability to schedule a special meeting to hear the complaints below.

- a. Complaint filed by John Daley on October 10, 2012 alleging violations of the San Jose Municipal Code by Jimmy Nguyen, candidate for Council District 8. (Independent Investigator/Evaluator)
- b. Complaint filed by Dennis Hawkins on October 26, 2012 alleging violations of the San Jose Municipal Code by Crema Coffee Co., et al. (Independent Investigator/Evaluator)
- c. Complaint filed by Dennis Hawkins on November 16, 2012 (and amended on December 7, 2012) alleging violations of the San Jose Municipal Code by Friends of Jimmy Nguyen, et al. (Independent Investigator/Evaluator)
- d. Complaint filed by Phong Q. Hoang on December 11, 2012 alleging the theft and destruction of campaign signs by Councilmember Rose Herrera and her husband Matt Wahlin. (Independent Investigator/Evaluator)

Action: The hearings on complaints a through d above were deferred to January 24, 2013 at 5:30 p.m. pursuant to the motion to defer the hearings made under Section II.

- B. Discussion and action on scheduling a Special Elections Commission meeting. (City Clerk)

Document Filed: Draft schedule for identifying and addressing areas of concern from Chair Michael Smith to the Elections Commission dated January 9, 2013.

Discussion: Chair Michael Smith provided copies of the "Draft schedule for identifying and addressing areas of concern" to the Commission for review. Chair Smith informed the Commission that he came up with the proposed schedule after meeting with Acting City Clerk Toni Taber and Senior Deputy City Attorney Sandra Lee and indicated that

the changes to the Municipal Code would need to be completed before the start of the 2014 election cycle.

Chair Michael Smith indicated that he would also like to appoint a subcommittee at the next Elections Commission meeting to work with staff in preparing and revising draft documents, to identify and prioritize areas of concern and to do some stakeholder outreach.

Action: No action taken.

#### **VIII. ITEMS SCHEDULED FOR INFORMATION OR DISCUSSION**

- A. Presentation of written report identifying possible areas of concern found through compliance monitoring with regard to campaign and ethics regulations and other required disclosures per 2012-13 work plan. (City Clerk)

Document Filed: Memorandum dated January 2, 2013 to the Elections Commission from Acting City Clerk Toni Taber regarding the potential items for discussion regarding changes to the Municipal Code.

Discussion: Acting City Clerk Toni Taber discussed the memorandum submitted regarding the potential items for discussion regarding changes to the Municipal Code and received feedback from the Commissioners. Ms. Taber indicated that she incorporated the items from former City Clerk Dennis Hawkin's memorandum to the Elections Commission, referrals from the Council, and items discussed by the Commission itself to create the list of possible changes to the Municipal Code. Ms. Taber requested that the Commissioners notify her of any additional items to be included on the list before the Priority Setting Session. Ms. Taber answered questions from the Commissioners and added additional suggestions to her list.

Public Comment: David Pandori, former City of San Jose Councilmember, provided background on Title 12.06.290 Campaign Contribution Collection Period and expressed he would not support an extension of the collection period.

Action: No action taken. Acting City Clerk Toni Taber will provide an updated list of potential items for discussion regarding changes to the Municipal Code to the Commissioners at the next meeting.

- B. Status of compliance with Commission resolution re: Silicon Valley Association of Republican Women (SVARW) – Verbal report by City Clerk.

Discussion: Deputy City Clerk Cecilia McDaniel informed the Commission that all of the resolutions from the hearings in 2012 have been mailed out to the parties. Chair Michael Smith inquired if the public statement was sent to the SVARW to be published in their newsletter. Acting City Clerk Toni Taber indicated that she was unsure if the statement was sent. Acting City Clerk Taber indicated that she would send out the statement with a follow-up letter to SVARW if not already done.

The Commissioners requested that the resolution of findings be sent to the parties of the

complaint in a timely matter after the completion of the hearing. Senior Deputy City Attorney Sandra Lee suggested that a standing item be added to the agenda template for status of resolutions. The Commissioners liked this idea and suggested other possible procedural changes with Acting City Clerk Toni Taber.

Action: No action taken. Chair Michael Smith requested that Acting City Clerk Toni Taber send a follow-up letter to SVARW attaching the public statement and giving them 30 days to prove compliance.

- C. Discussion of cumulative results of investigations and possible areas of concern with regard to campaign and ethics regulations and policies per 2012-13 work plan. (City Clerk)

Duplicate agenda item. See item VIII.A above for documents filed, discussion, public comment and action taken.

- D. Status of proposed changes to the Gift Ordinance – Verbal report by the City Attorney

Discussion: Senior Deputy City Attorney Sandra Lee did not have an update on the Gift Ordinance. Ms. Lee indicated that she would have a report to give at the next meeting.

Action: No action taken.

## **IX. MEETING SCHEDULE AND AGENDA ITEMS**

A Special Meeting is scheduled for Thursday, January 24, 2013, for the hearings on the complaints.

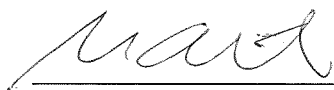
The next Regular Meeting is Wednesday, February 13, 2013.

### **The following agenda items will be discussed at the February 13, 2013 Elections Commission meeting:**

- Compliance monitoring – Consideration of issues arising from prima facie review of campaign finance and other required disclosures per 2012-13 work plan
- Appoint a subcommittee to work with staff in preparing and revising draft documents and to identify and prioritize areas of concern
- Status of Commission resolutions
- Status of proposed changes to the Gift Ordinance

**X. ADJOURNMENT**

The meeting was adjourned at approximately 7:09 p.m.



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MICHAEL SMITH, CHAIR

ATTEST:  
ELECTIONS COMMISSION SECRETARY



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TONI J. TABER, CMC